



Comptroller General
of the United States

Washington, D.C. 20548

Decision

REDACTED VERSION

Matter of: Management Technical Services

File: B-250834

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the decision.

DIGEST

Contracting agency reasonably excluded protester's proposal from the competitive range as technically unacceptable where the record shows that the technical evaluators properly downgraded protester's proposal in areas found deficient in accordance with solicitation evaluation criteria.

DECISION

Management Technical Services (MTS) protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. N68711-91-R-4677, issued by the Department of the Navy, Navy Public Works Center for maintenance and operation of military family housing units in the San Diego, California area. The protester contends that the Navy improperly evaluated its proposal, deviated from the evaluation criteria announced in the RFP, and arbitrarily excluded the firm from the competitive range.

We deny the protest.

The RFP, issued on April 21, 1992, contemplated the award of a firm fixed-price/indefinite quantity contract with award fee provisions for all necessary personnel, equipment and supplies for facility, pool, appliance and grounds maintenance, custodial and refuse collection services and change of occupancy maintenance for 4,783 military family

The decision, issued on February 22, 1993, contained proprietary information and was subject to a General Accounting Office protective order. This version of the decision has been redacted. Deletions in text are indicated by "[deleted]."

housing units. Contract award was for a base year with three 1-year options.

The RFP provided that technical proposals were to be evaluated on the basis of 10 subfactors grouped under the factors of Performance Administration, Quality of Workmanship, Timeliness and Contractor Experience essentially as follows:

- (a) Performance Administration:
 - (1) Utilization/management of subcontractors
 - (2) Knowledge of/compliance with Federal labor laws
 - (3) Self initiative to identify/correct deficiencies
- (b) Quality of Workmanship:
 - (4) Adopting total quality leadership philosophy
 - (5) Maintaining facilities and grounds
 - (6) Minimalizing need for government administration
- (c) Timeliness:
 - (7) Respond to scheduled work in a timely manner
 - (8) Rectify the situation the first time every time
- (d) Experience:
 - (9) High dollar contracts or numerous varied dollar contracts
 - (10) Managing housing (or base) maintenance contracts

The RFP advised offerors that the subfactors would be equally weighted and included, at section C, a statement of work which detailed the contract requirements. The work statement provided, among other things, a description of the various housing facilities to be serviced and a list of 20 required maintenance services.¹ Each of these services was explained in detail in "annexes" to the RFP.

¹The 20 required maintenance services include: maintenance of family housing facilities; unscheduled housing maintenance; maintenance of swimming pools and spas; grounds maintenance; unscheduled grounds maintenance; refuse collection and disposal service; unscheduled refuse collection and disposal; custodial services; unscheduled cleaning; painting (interior and exterior); bathtub and shower refinishing; bathtub, shower and shower pan replacement; wood floor refinishing, parquet and hardwood floor repairs; floor covering; fumigation; household appliance removal, installation, repair and reconditioning; ceiling and wall repair; counter tops replacement; furnace replacement; and, household pest control.

[Deleted] firms submitted proposals by the June 2 closing date. A technical evaluation board evaluated all proposals using an adjectival rating scheme.² After the evaluation of the initial technical proposals, MTS received an "unacceptable" rating with respect to seven of the ten subfactors.³ The technical evaluators significantly downgraded MTS' proposal under all of the subfactors included in the Performance Administration, Timeliness and Experience factors and under the total quality leadership subfactor under the Quality of Workmanship factor. The proposal was ranked ninth of the [deleted] proposals submitted. Its price was seventh highest. As a result, the evaluators assigned MTS' an overall rating of "unacceptable."

After some confusion concerning the number of firms to be included in the competitive range--MTS was never a candidate in the evaluators' view--the evaluators recommended that [deleted] firms whose proposals were ranked higher technically than MTS be included. By letter dated October 2, the agency notified MTS that its proposal was excluded from the competitive range.

MTS first objects to its removal from the competitive range on the ground that the agency improperly evaluated its proposal. In this regard, the protester challenges virtually all of the more than 20 concerns cited by the agency evaluators as insupportable and argues that many of them also concerned matters which were not encompassed within the RFP evaluation criteria. The protester further maintains that we should not consider an analysis of the protester's challenge to the evaluation prepared by the chair of the agency's technical evaluation panel. MTS contends that the Navy should not be permitted to justify the exclusion of MTS based upon a document prepared after-the-fact.

²The adjectival rating scheme included five ratings: excellent, very good, acceptable, marginal and unacceptable.

³MTS received unacceptable ratings under the following subfactors: (1) utilization/management of subcontractors, (2) knowledge of/compliance with Federal labor laws, (3) adopting total quality leadership philosophy, (4) respond to scheduled work in a timely manner, (5) rectify the situation the first time every time, (6) high dollar contracts or numerous varied dollar contracts, and (7) managing housing (or base) maintenance contracts.

The evaluation of proposals and the resulting determination whether an offer is in the competitive range is a matter within the discretion of the contracting agency since that agency is responsible for defining its needs and the best method of accommodating them. Delta Ventures, B-238655, June 25, 1990, 90-1 CPD ¶ 588. In reviewing an agency's technical evaluation, we will not reevaluate the proposal, but instead we will examine the agency's evaluation to ensure that it was not arbitrary or inconsistent with the RFP evaluation criteria. Id.

In considering a challenge to a technical evaluation, we look to the entire record, including statements and arguments made in response to a protest, so that we may determine whether the decision is supportable; we do not limit our review to the question of whether it was properly documented at the time it was made. See JSA Healthcare Corp., B-242313; B-242313.2, Apr. 19, 1991, 91-1 CPD ¶ 388; Burnside-Ott Aviation Training Center, Inc.; Reflectone Training Sys. Inc., B-233113; B-233113.2, Feb. 15, 1989, 89-1 CPD ¶ 158. The protester asks that we disregard a detailed point-by-point response to its arguments regarding the adequacy of its proposal prepared by the chair of the technical evaluation panel. We accord greater weight to contemporaneous source selection materials than to documents prepared in response to protest contentions, and did so in this case. The agency's evaluation was well documented at the time it was made, and we placed primary reliance on that material.

As discussed below, based upon our review of the entire record, including all of the agency's and the protester's submissions, we conclude that the agency's evaluation of MTS' proposal was reasonable and in accord with the RFP's evaluation criteria.

PERFORMANCE ADMINISTRATION

In its evaluation under the Performance Administration factor, the agency downgraded the MTS proposal for failing to describe its management plan, and for including insufficient information on the firm's proposed organization and lines of authority. In explaining the basis for its conclusion, the agency states that, in addition to the general lack of clarity in MTS' plan, the firm did not specify how its proposed management organization would function in relation to each of the 20 tasks listed in the RFP. Further, MTS' proposal was downgraded under this factor for not demonstrating knowledge and experience under the applicable labor laws and not providing information specifying how it would correct work deficiencies.

MTS argues that its management plan and approach are "discussed throughout the [p]roposal," especially on pages 38 through 56, and that detailed information on its organizational lines of authority was "not listed among the ten evaluation subfactors listed in section M." MTS also states that it discusses in great detail how it will comply with the Davis Bacon Act (DBA) and the Service Contract Act (SCA) on pages 17 through 25 of its proposal. The protester states that it chose to discuss the DBA and SCA "to provide the Navy with proof of its understanding of the [l]abor [l]aw mandated payroll requirements. Compliance with other [l]abor [l]aws should be assumed as a given." MTS argues that experience under applicable labor laws is not listed as a specific RFP criterion and should not have entered into the evaluation. Finally, the protester states that it has proposed a "proactive" plan for quality control which is discussed at pages 26 through 36 and in attachment 1 to its proposal.

First, as to MTS' argument that the agency used unannounced criteria, evaluation criteria by their nature are used to measure the extent to which and how well proposals satisfy agency requirements. There is no requirement that only matters explicitly set forth in the RFP evaluation scheme be used for determining the offer that is most advantageous. Matters that concern the agency's requirements as specified in the RFP and which are logically included within the listed factors and subfactors may be properly considered. Drytech, Inc., B-246152.2, Feb. 24, 1992, 92-1 CPD ¶ 217.

Section M of the RFP set forth detailed instructions on the type of information offerors were required to provide in their proposals in order to satisfy each evaluation factor and subfactor. The instructions repeatedly asked offerors to address the evaluation subfactors in relation to the 20 specific tasks identified in section C. In regard to the Performance Administration factor, the RFP specifically instructed offerors to outline their proposed administrative structure, including lines of authority, supervision and accountability in relation to the 20 tasks listed in the RFP. Thus, the RFP clearly explained that these matters were to be included in the evaluation of Performance Administration. Also, since the RFP specified that knowledge of and compliance with labor laws would be evaluated, an offeror's experience with such laws is logically included and was properly considered. Drytech, Inc., supra.

As far as the actual evaluation under this factor is concerned, MTS' proposal only generally addresses management on pages 38 through 56, stating that "[t]he day to day management of the military family housing operations in San Diego will be the responsibility of the project manager or

his assistant. It is our corporate philosophy to let the on site project manager act for MTS." A simple organizational chart is also set forth. In the last paragraph in this section, MTS states that overall management of the contract will be the responsibility of corporate headquarters and that the president and operations manager will oversee the contract. Contrary to the requirements of the RFP, MTS did not discuss its management of the project in relation to any of the 20 listed tasks. Other pages cited by MTS as addressing the management of the project discuss staffing and recruiting methods and provide the resumes of key personnel. No information is provided on lines of authority, supervision, and accountability as required by the RFP.

As to its knowledge of federal labor laws, a review of pages 17 through 25 of MTS' proposal shows that the protester discusses the SCA and the DBA only in relation to payroll. Indeed, MTS explains its accounting system for computing [deleted] and for maintaining a [deleted] record. However, proper accounting and pay procedures are only one aspect of knowledge of labor laws. The protester provided no information on its knowledge of or experience concerning the impact of labor laws on fringe benefits, working conditions, collective bargaining, taxes/insurance, equal employment opportunities or labor relations. Contrary to the MTS' assertion, an agency cannot "assume as given" knowledge or experience in this area or any other which is not demonstrated in the proposal.

As for identifying and correcting work deficiencies, pages 26 through 36 of the MTS proposal discuss its quality control program in terms of inspecting workmanship, materials, documentation, timely completion of tasks and the submission of quality control reports. MTS also discusses monitoring service calls in regard to timeliness of response, quality of work and occupant satisfaction. Attachment A of the proposal again outlines the protester's quality control plan in terms of inspections and reports. Neither of these sections of the proposal provides information as required by the RFP regarding actions to be taken in event of a work slow down, strike, or other contingency.

In our view, the evaluators reasonably downgraded the protester's proposal under the Performance Administration factor because of the failure of MTS to address the issues as specified in the RFP.

QUALITY OF WORKMANSHIP

The evaluators downgraded MTS' proposal on the total quality leadership subfactor under Quality of Workmanship. The

evaluators found that MTS did not demonstrate an understanding of total quality leadership or the implementation of the concept.

MTS argues that it addresses total quality leadership on page 38 of its proposal as well as in a paragraph on training and its "start up plan" on page 58.

MTS' proposal at page 37 states that its philosophy concerning quality has its "roots in the military models of [deleted] and [deleted] and that "[l]ocal project leadership assignments are made predicated on the concepts [deleted] in an effort to maximize [deleted]." MTS further states that its success is due "to the [deleted]."

The paragraph MTS cites as relating to the implementation of a total quality leadership plan discusses employee training, in such matters as company policies, personal work habits and appearance, courtesy to occupants, care and use of equipment and tools, quality of workmanship, and method and manner of performing requests. On page 58 of its proposal, MTS outlines its start-up plan, which addresses, among other things, staffing, facilities, material, vehicles, equipment, and its communications system.

We share the agency's view that this is not an adequate discussion of total quality leadership or its implementation. Indeed, as the agency points out, [deleted] and [deleted] are not necessarily consistent with total quality leadership. [Deleted] is an objective of total quality leadership, but total quality leadership emphasizes zero defects via the application of continuous improvement, not continuous inspection. As the agency explains, its philosophy of quality leadership is client oriented management that stresses continuous improvement and the reworking of processes, including team concepts, data collection and analysis and an emphasis on greater employee involvement and authority to suggest changes in work processes. [Deleted] as suggested by MTS is the antithesis to this emphasis on employee involvement and authority.

MTS also argues that the "implementation" of total quality leadership is not a separate evaluation subfactor, and for that reason, should not have been evaluated. MTS was not separately downgraded for the fact that it has [deleted]. The fact that it has not done so was merely a portion of the agency's overall consideration of the quality leadership subfactor. We believe that the implementation of total quality leadership is reasonably related to an offeror's understanding of this management approach and its ability to implement the approach under the contract.

The protester complains about the agency's downgrading of its proposal in this as well as other areas by stating that "this item is not listed among the ten evaluation subfactors in section M," without further explanation for its position or an indication of where the matter is treated in its proposal. We have examined each of the instances pointed out by MTS and in each the matter is clearly encompassed within the stated RFP evaluation factors and, in most instances, is also addressed in the RFP proposal preparation instructions. We see no purpose in further detailed discussions of these arguments.

TIMELINESS

In responding to the Timeliness factor, the RFP advised offerors to demonstrate how their proposed organizations will manage and perform the 20 required tasks in a timely manner. Offerors were instructed to provide work control and scheduling systems, plans and procedures for completing work requirements within the specified response and completion times set for service calls, and maintenance and repair work and procedures for providing data on scheduled and unscheduled work.

The Navy downgraded MTS for failing to demonstrate an understanding of the required response time for service calls and of how service calls would be responded to within the parameters of the specifications. The proposal was also downgraded because it did not adequately address the service center, work reception and control, scheduled and unscheduled work, or how the firm would rectify the situation the first time every time.⁴

While the RFP specified a required response time for service calls of 2 days, MTS proposed to complete routine service calls within 7 days. MTS argues that "the 7 is a clerical error" and contends that pages 64 through 76 of its proposal detail "MTS' understanding of the importance of a well run service department." MTS also argues that the discussion included in the proposal, "along with the experience of the corporation and key management personnel demonstrates a complete and [thorough] understanding of the service requirements. . . ."

⁴The agency downgraded MTS on numerous other weaknesses related to the Timeliness factor which the protester claims were improperly evaluated. We have reviewed each of the weaknesses pointed out by the agency and in each instance, believe the evaluation was reasonable. While we discuss in our decision the major weaknesses cited by the agency, we see no purpose in treating in detail all the weaknesses noted by agency evaluators.

The pages cited by MTS explain the firm's service department and its organization of the effort into [deleted]. The proposal also discusses MTS' computer tracking system, the implementation of an automated record keeping system and the use of [deleted] to reduce [deleted] and [deleted]. MTS does not discuss its staffing, organization, scheduling, materials acquisition or reporting plans in relation to any of the 20 required tasks, including scheduled and unscheduled work, as required by the RFP. Similarly, MTS does not adequately discuss the service center, work reception or control or how MTS will rectify the situation the first time every time. Based upon the lack of essential detail in MTS' response to these RFP requirements, we conclude that the agency's evaluators exercised their technical judgment in a reasonable manner in downgrading the MTS proposal under this factor.

EXPERIENCE

As to the Contractor Experience factor, according to the agency, there are discrepancies between what information MTS supplied in its proposal and the information required. Specifically, the RFP required that offerors demonstrate experience with high-dollar contracts or "numerous varied dollar contracts" and experience managing housing (or base) maintenance contracts. MTS' proposal was not well organized and, while the table of contents contained a proposal format in accordance with the RFP's evaluation subfactors, information relevant to one subfactor was often included in a section dealing with a different subfactor. For example, MTS discusses a \$195 million contract for maintenance of family housing in Hawaii under the Timeliness factor of its proposal. This contract is not listed in MTS' proposal under the Experience factor. Indeed, while MTS lists 11 government contracts in the Experience section of its proposal and states that it has completed or is currently working on "several large scale integrated government service contracts," it does not set forth the dollar value of any of them. Additionally, only one of these 11 contracts involves housing maintenance; the other contracts involve custodial/janitorial services, grounds maintenance and security services.

MTS argues that "[a]s a general rule, MTS does not provide dollar values when submitting contract references" and that it had never been told that "failure to provide contract values made its proposal deficient." Here, however, the agency specifically sought from each offeror information regarding the dollar value of previous contracts. By choosing to ignore the RFP's specific instruction to provide this information, MTS assumed the risk that, as occurred here, the evaluators would not find sufficient details to evaluate its past experience. Therefore, we find

that the evaluators reasonably downgraded the protester's proposal on this subfactor.

In sum, we conclude that the evaluators' judgments concerning the merits of MTS proposal to have been reasonable and consistent with the evaluation scheme established by the solicitation.

The Federal Acquisition Regulation, § 15.609, provides that competitive range determinations must be based on price as well as technical factors. However, a technically unacceptable proposal can be excluded from the competitive range irrespective of its lower offered price. Electronic Systems USA, Inc., B-246110, Feb. 14, 1992, 92-1 CPD ¶ 190. MTS complains that its proposal was acceptable, and, therefore, the agency should have considered the firm's price prior to eliminating it from the competitive range, noting that its price is lower than three of the [deleted] offerors included in the competitive range. This argument results from MTS' contention that its proposal was considered acceptable. This view is, in turn, based upon MTS' reading of the portion of the evaluation record in which the agency reconsidered its initial determination to include only [deleted] firms in the competitive range and decided to expand the group to [deleted]. The agency raised the factor evaluation ratings of several of the firms based upon the average of the ratings received under the subfactors. In this recalculation of the ratings, MTS' overall rating of "unacceptable" was not changed. However, the final narrative discussion of the MTS proposal did not, as the protester points out, use the phrase "technically unacceptable and not susceptible to being made acceptable" as was used repeatedly in initial descriptions of MTS' proposal by the evaluators; instead, the most current description of MTS' proposal was that "No amount of effort by MTS short of a complete proposal rewrite and a total change in management methodology could improve [the firm's] standing to be technically competitive for the proposed effort." MTS believes that this represents an improvement in its rating such that the proposal could no longer be removed from the competitive range without consideration of its price.

We do not believe that the record supports MTS' optimistic interpretation of its rating. Notwithstanding the language used to describe the MTS proposal in the final evaluation document, it is clear from the record that the agency reasonably concluded that the MTS proposal was technically unacceptable and that it was not susceptible to being made acceptable. It was ninth out of [deleted] in technical merit and not even considered to be the best of the unacceptable proposals. Consequently, the fact that MTS offered to perform the contract at a lower price than three

of the offerors included in the competitive range is
irrelevant to its exclusion from the competition.

The protest is denied.

James F. Hinchman
General Counsel